

BEFORE THE  
SURFACE TRANSPORTATION BOARD

223590

Finance Docket No 35147

NORFOLK SOUTHERN RY CO, PAN AM RY INC ET AL  
JOINT CONTROL AND OPERATING/POOLING AGREEMENTS  
-PAN AM SOUTHERN LLC

**RESPONSE OF THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
DIVISION/IBT AND BROTHERHOOD OF RAILROAD SIGNALMEN  
TO REQUEST FOR ORAL ARGUMENT**

The Brotherhood of Maintenance of Way Employees Division/IBT ("BMWED") and Brotherhood of Railroad Signalmen ("BRS"), support the request of a number of parties for the holding of oral argument in these proceedings. BMWED and BRS do not join in the arguments advanced by the moving parties as a basis for oral argument, nor have BMWED and BRS changed their position with respect to the Application and related filings. However, BRS and BMWED believe that the Board should hold oral argument because of uncertainty arising from events that have occurred since the filing of comments in these proceedings. In particular, BMWED and BRS have learned that the Greenbrier Companies have filed a motion in the United States District Court for the District of Massachusetts for creation of a receivership and appointment of a receiver for Springfield Terminal Ry Co and Boston & Maine Corp. Neither Greenbrier nor the Applicants have addressed that motion and its potential consequences in any filing before the Board. Nor is there an opportunity for discovery or additional comments and responses under the current case schedule. Oral argument is the only available mechanism for interested parties to learn about and comment on the impact of a receivership, for the Applicants to address questions arising from the Greenbrier motion, and for the Board to learn about and

obtain answers from Applicants and hear the concerns of other parties about the receivership motion

The Board will recall that BMWED and BRS did not support or support or oppose the Primary Transaction and related transactions in concept. Other than objecting to the use of Section 10901 for the PAS acquisition, BRS and BMWED argued that if STB approval is granted, it should be subject to certain conditions necessary for the protection of Maintenance of Way Employees and Signalmen. One of the requested conditions is imposition of representations made by Applicants regarding continued Springfield Terminal operation of the PAS lines with Springfield Terminal employees under existing Springfield Terminal collective bargaining agreements, and continuation of Springfield Terminal employees under the existing collective bargaining agreements if Springfield Terminal is replaced as the operator, as conditions of approval of the Primary Transaction and the related "embraced" transactions.

The BMWED and BRS comments were predicated in part on the concern that PAS could terminate Springfield Terminal as the contract operator. The Application stated that Springfield Terminal would "initially" be the operator of PAS, and that Springfield Terminal would be the operator for the "foreseeable future", but that Springfield Terminal could be terminated as the Operator. Additionally, the Application and Applicant discovery responses indicated that a change of control of the PARI parties would be grounds for changing the control provisions of the various agreements that underlie the Application and effectively place PAS in the control of Norfolk Southern. The Applicants explicitly relied on the Springfield Terminal Operating Agreement and the Springfield Terminal CBAs to satisfy requirements for statements as to employee impacts, and to obtain support for their plans. And Applicants have cited the Springfield Terminal operating agreement as addressing the concerns of employees because

Springfield Terminal would continue to be the operator of the lines in question under its current collective bargaining agreements BMWED and BRS believe that such assurances while well-intended, are not sufficient, and that Applicants' representations in this regard should be made conditions of any approval of the primary embraced transactions

The event of a receivership motion heightens the concerns of BRS and BMWED Will Springfield Terminal still be the PAS Operator if it is placed in receivership? Will Springfield Terminal still be able to be PAS Operator if Springfield Terminal is placed in receivership? Will a receiver allow Springfield Terminal to continue to perform as PAS Operator? At this point, the only way for interested parties and the Board to get answers to those questions, and the only way for interested parties to react to those answers is if the Board holds oral argument <sup>1</sup> If the Applicants are unable to show that the receivership motion and any receivership order will not affect the representations made by Applicants with respect to the issues raised by BRS and BMWED, that would strengthen BMWED/BRS argument for imposition of a condition binding the Applicants to their representations regarding Springfield Terminal employees and collective bargaining agreements BMWED and BRS therefore support the motion for oral argument in these proceedings

Respectfully submitted,

/s/

Richard S. Edelman  
O'Donnell, Schwartz & Anderson  
1300 L Street, N W Suite 1200  
Washington, D C 20005  
(202) 898-1707  
(202)-682-9276  
REdelman@odsalaw.com

Dated September 15, 2008

---

<sup>1</sup>Ideally, the Applicants would provide information about the receivership and state a position about the receivership motion and its consequences before an oral argument

## **CERTIFICATE OF SERVICE**

I hereby certify that I have caused to be served copies of the foregoing Response of the Brotherhood of Maintenance of Way Employees Division/IBT and Brotherhood of Railroad Signalmen To Request for Oral Argument by first-class mail, postage prepaid, to the offices of the following

Richard A Allen  
Zuckert, Scout & Rasenberger LLP  
888 Seventeenth Street NW  
Suite 700  
Washington, DC 20006

Attorney General of the United States  
c/o Assistant Attorney General,  
Anti-trust Division, Room 3109  
Department of Justice  
Washington, DC 20530

John V Edwards  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, VA 23510

Secretary of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Robert B Culliford  
Senior Vice President and General Counsel  
Pan Am Railways, Inc  
14 Aviation Avenue  
Portsmouth, NH 03801

Edward D Greenberg  
Galland, Kharasch, Greenberg, Fellman  
& Swirsky, P C  
Canal Square  
1054 Thirty-First Street, N W  
Washington, DC 20007

Louis E Gitomer  
The Adams Building  
600 Baltimore Avenue, Suite 301  
Towson, MD 21204

Daniel R Elliot, III  
United Transportation Union  
14600 Detroit Avenue  
Cleveland, OH 44107

Harold A Ross  
23195 Stonybrook Drive  
North Olmsted, OH 44070

Dave Fellon  
Progressive Rail Inc  
21778 Highview Avenue  
Lakeville, MN 55044

Roger J Schiera  
New York State Department of  
Transportation  
50 Wolf Road  
Albany, NY 12232  
Harry P Carroll  
City of Springfield, Massachusetts  
36 Court Street, Room 210  
Springfield, MA 01103

Chalmers Hardenbergh  
Atlantic Northeast Rails & Ports  
162 Main Street  
Yarmouth, ME 04096

Toni L Kemmerle  
Maine Department of Transportation  
16 State House Station  
Augusta, ME 04333

**Thomas D Hall**  
**Committee to Improve Rail Service in**  
**Maine**  
**176 Merrill Road**  
**Pownal, ME 04069**

**Stephen G LaBonte**  
**New Hampshire Department of**  
**Transportation**  
**33 Capitol Street**  
**Concord, NH 03301**

**Peter C Vail, Jr**  
**Carolina Easter-Vail, Inc**  
**4134 State Rte 22**  
**P O Box 483**  
**Salem, NY 12865**

**Jeffrey B Mullan**  
**Commonwealth of Massachusetts**  
**Executive Office of Transportation**  
**and Public Works**  
**Ten Park Plaza**  
**Boston, MA 02116**

**Michael S Wolly**  
**Zwerdling, Paul, Kahn, & Wolly**  
**1025 Connecticut, N W**  
**Suite 712**  
**Washington, DC 20036**

**Eugene J Colonese**  
**Connecticut Department of**  
**Transportation**  
**2800 Berlin Turnpike**  
**P O Box 317546**  
**Newington, CT 06131**

**Vincent P Szeligo**  
**Wick, Streiff, Meyer O'Boyle & Szeligo**  
**1450 Two Chatham Center**  
**Pittsburgh, PA 15219**

**Kevin C Maughan**  
**Greenbrier Leasing Company LLC**  
**One Centerpointe Drive, Suite 200**  
**Lake Oswego, OR 97035**

**James E Howard**  
**One Thompson Square**  
**Suite 201**  
**Charlestown, MA 02129**

**Eric M Hocky**  
**Thorp Reed & Armstrong, LLP**  
**One Commerce Square**  
**2005 Market Street, Suite 1910**  
**Philadelphia, PA 19103**

**Keith G O'Brien**  
**Baker & Miller PLLC**  
**2401 Pennsylvania Ave , N W**  
**Suite 300**  
**Washington, DC 20037**

**Edward J Rodriguez**  
**Housatonic Railroad Company**  
**8 Davis Road West**  
**P O Box 687**  
**Old Lyme, CT 06371**

**Myles L Tobin**  
**Fletcher & Sippel**  
**29 North Wacker Drive, Suite 920**  
**Chicago, IL 60606**  
**William L Taber**  
**Batten Kill Road**  
**1 Elbow Street**  
**Greenwich, NY 12834**

**Peter R Leishman**  
**Milford-Bennington Railroad Co , Inc**  
**62 Elm Street**  
**Milford, NH 03055**

Timothy Brennan  
Pioneer Valley Planning Commission  
26 Central Street, Suite 34  
West Springfield, MA 01089

William C Sippel  
Fletcher & Sippel  
29 North Wacker Drive, Suite 920  
Chicago, IL 60606

Captain Dirck Hecking  
Consultant Group of Hecking  
& Remington, LLP  
6215 Coffman Road  
Indianapolis, IN 46268

Ronald A Lanc  
Fletcher & Sippel  
29 North Wacker Drive, Suite 920  
Chicago, IL 60606

DonnaLee Lozeau  
City of Nashua  
229 Main Street  
P O Box 2019  
Nashua, NH 03061

John K Dunlevy  
Vermont Agency of Transportation  
One National Life Drive  
Montpelier, VT 05633

Paul A Cunningham  
Harkins Cunningham LLP  
1700 K Street, N W , Suite 400  
Washington, DC 20006

Alison H Crocker  
New York State Department of  
Environmental Conservation  
Office of the General Counsel  
625 Broadway, 14 Floor  
Albany, NY 12233

Shaun A Suhoski  
Town of Ayer Massachusetts  
1 Main Street  
Ayer, MA 01432

Bernard R Kubiak  
Town of Deerfield  
8 Conway Street  
South Deerfield, MD 01373

August 11, 2008

/s/

---

Richard S Edelman